

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JERRY RANDLEMAN, et al.,)	CASE NO. 3:06-CV-07049-JGC
)	
Plaintiffs,)	JUDGE JAMES G. CARR
)	
v.)	<u>PARTIES' JOINT STATUS REPORT</u>
)	
FIDELITY NATIONAL TITLE INSURANCE COMPANY,)	
)	
Defendant.)	

Plaintiffs Jerry and Dianne Randleman and defendant Fidelity National Title Insurance Company (“Fidelity”) hereby submit to the Court, by and through their respective counsel of record, this joint status report.

On April 14, 2010, the Court ordered the parties to submit a joint status report within two weeks following the Sixth Circuit’s decision on plaintiffs’ appeal of this Court’s September 15, 2009 class decertification order. (Dkt. No. 144.) On May 16, 2011, the Sixth Circuit issued its opinion affirming this Court’s decertification order. The Sixth Circuit thereafter issued a mandate effecting its decision on June 10, 2011. (Dkt. No. 148.)

In light of the Sixth Circuit’s decision affirming the Court’s decertification order, only the named plaintiffs’ individual claims for breach of contract and unjust enrichment remain to be resolved.

A. Defendant Fidelity’s Position.

Following the Sixth Circuit’s decision, on June 7, 2011, Fidelity tendered a check to plaintiffs in the amount of \$270.83. This amount includes a full refund of the alleged overcharge in the amount of \$170.40, plus interest in the amount of \$100.43, calculated from the date of policy issuance to the present. Although Fidelity disputes plaintiffs’ allegations and believes that

no refund is due, Fidelity issued the refund to eliminate any case or controversy between plaintiffs and Fidelity. The refund was made without waiver of defenses or admission of liability.

Based on its having tendered a complete refund to plaintiffs, Fidelity requested that plaintiffs dismiss their individual claims. Plaintiffs have refused. As a result, Fidelity is now forced to move within forty-five (45) days to dismiss the named plaintiffs' individual claims for lack of subject matter jurisdiction.

B. Plaintiffs' Response.

Following the Sixth Circuit's decision, other parallel title insurance cases have been resolved (or are in the process of being resolved) by way of offers of judgment under Civil Rule 68. An offer of judgment under Rule 68(a) must include accrued costs. Fidelity's "tender" does not constitute an offer of judgment, and there is no basis upon which Fidelity can seek or obtain a judgment in its favor in this action by simply acknowledging its wrongful conduct. An appropriate offer of judgment under Rule 68(a) will resolve this case.

C. Fidelity's Reply.

Plaintiffs do not seem to dispute the lack of case or controversy relating to their individual claims; rather, they believe they are entitled to class-wide costs resulting from Fidelity's refund. In light of the Sixth Circuit's opinion, it is Fidelity, not plaintiffs, that should be entitled to class-wide costs. Fidelity's motion to dismiss for lack of subject matter jurisdiction will address this issue as well. Fidelity's motion would not seek judgment in plaintiffs' favor, but rather dismissal for lack of subject matter jurisdiction because the refund with interest, being all the plaintiffs could recover in this action, moots the case and controversy. Following dismissal either side can move to recover their costs consistent with the Court's jurisdiction.

Respectfully submitted,

s/ Ernest E. Vargo

Ernest E. Vargo (0030761)
Michael E. Mumford (0073931)
BAKER & HOSTETLER LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485
(216) 621-0200
(216) 696-0740 (Facsimile)

Michael C. Cohan (0013542)
Alex E. Goetsch (0065026)
CAVITCH, FAMILO, DURKIN & FRUTKIN
1300 East Ninth Street, 20th Floor
Cleveland, Ohio 44114
(216) 621-7860
(216) 621-3415 (Facsimile)

s/ Mark R. Koberna

Mark R. Koberna (0038985)
Rick D. Sonkin (0038771)
SONKIN & KOBERNA Co., L.P.A.
3401 Enterprise Pkwy., Suite 400
Cleveland, Ohio 44122
(216) 514-8300
(216) 514-4467 (Facsimile)

Marvin L. Karp (0021944)
David D. Yeagley (0042433)
ULMER & BERNE LLP
1100 Skylight Office Tower
1606 West 2nd Street, Suite 1100
Cleveland, Ohio 44114-1448
(216) 583-7216
(216) 583-2717 (Facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2011, a copy of the foregoing was electronically filed. Notice of this filing will be sent to counsel of record for all parties by operation of the Court's Electronic Case Filing system. Parties and their counsel may access this filing through the Court's Electronic Case Filing system.

s/ Michael E. Mumford

One of the Attorneys for Fidelity National Title
Insurance Company

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